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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,516	05/25/2000	Niranjan Tripathy	FN-3012	9356

7590 08/08/2006

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EXAMINER

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ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 08/08/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/580,516
Filing Date: May 25, 2000
Appellant(s): TRIPATHY ET AL.

MAILED
AUG 08 2006
Technology Center 2100

Melvin H. Pollack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 24 May 2006 appealing from the Office action mailed 19 August 2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,910,984	LOW	06-1999
5,768,353	BROWNE	06-1998
5,862,325	REED et al.	01-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 8, 12, 16, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Low (5,910,984).
3. For claim 1, Low teaches a computer and software system (abstract) for managing telecommunication network elements (col. 1, line 1 – col. 3, line 40), comprising:
 - a. One or more operator-driven processes (Fig. 10) which monitor and manage (Figs. 8 and 9) network elements (Fig. 1, #12, 13) of a voice and data network (col. 7, lines 10-40), in real time (Fig. 4), using at least one telecommunications network control channel (col. 7, line 40 – col. 8, line 10); and
 - b. Automatically initiated background processes which remotely backup information which has been locally stored in ones of said network elements (col. 10, line 35 – col. 11, line 15; col. 11, line 45 – col. 12, line 5).
4. For claim 2, Low teaches that said background processes launch automatically on a programmed schedule (col. 11, lines 1-15 and 30-35).

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5. For claim 3, Low teaches that said background processes also can remotely restore information which had been locally stored on ones of said network elements (col. 11, lines 15-30).

6. For claims 4, 12, and 20, Low teaches a method (abstract) for managing (col. 1, line 1 – col. 3, line 40) a plurality of network elements of a telecommunications network (Figs. 1-4), comprising:

- a. Coupling a telecommunications network element manager with a plurality of network elements that provide voice network connectivity, using at least one telecommunications network control channel (Fig. 1);
 - b. Each network element being operable to store respective local data (Fig. 4) regarding the configuration or operation of the network element (col. 7, lines 45-65);
 - c. Receiving, from each of the plurality of network elements, the respective local data (col. 10, lines 40 – 60); and
 - d. Storing the respective local data at a database of the network element manager (Fig. 10, #55).
7. For claims 8 and 16, Low teaches detecting, at the network element manager, a corrupted network element database associated with one of the plurality of network elements, and restoring the corrupted network element database with configuration data regarding the corrupted network element database, stored at the network element manager (col. 3, line 40 – col. 4, line 50).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5, 9, 13, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Low as applied to claims 4, 12 above, and further in view of Browne (5,768,353).

10. For claims 5, 9, 13, and 17, Low does not expressly disclose that at least one of the plurality of network elements comprises an OSI network element having an active memory and a random access memory that is coupled for communication with the active memory, further comprising copying configuration files to the random access memory, from the active memory, and copying contents of the random access memory to the network element manager using OSI FTAM protocol, nor does Low disclose the process reversal. Browne teaches a method (abstract) of data collection in voice/data networks (col. 1, line 1 – col. 3, line 60) including data backups of the network (col. 5, line 25 – col. 6, line 8) using the RAM/FTAM method (col. 7, lines 10-50) for an OSI network (col. 9, lines 10-25 and 55-60) in the manner described above (Fig. 13; col. 15, lines 20-30). At the time the invention was made, one of ordinary skill in the art would have used the Browne method in Low in order to utilize legacy systems (col. 9, lines 34-55).

11. Claims 6, 10, 14, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Low as applied to claims 4, 12 above, and further in view of Reed et al. (5,862,325).

12. For claims 6, 10, 14, 21, Low does not expressly disclose that at least one of the plurality of network elements comprises an IP gateway network element having an active memory and a random access memory that is coupled for communication with the active memory, further

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comprising copying configuration files to the random access memory, from the active memory, and copying contents of the random access memory to the network element manager using FTP protocol, nor does Low expressly disclose the reversal process. Reed teaches a method (abstract) of handling databases in the voice/data environment (col. 1, line 1 – col. 10, line 10) for which backup processes have been used using the above method (col. 93, lines 15-30; col. 114, lines 10-35). At the time the invention was made, one of ordinary skill in the art would have used the Reed method in Low in order to utilize better addressable attributes (col. 81, lines 40-45).

13. Claims 7, 11, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Low as applied to claims 4, 12 above, and further in view of Browne and Reed.

14. For claims 7, 11, 15, and 19, they are a combination of claims 5 and 6, or of related claims as shown above. Hence, they are rejected for the reasons above.

(10) Response to Argument

Applicant's arguments filed 24 May 2006 have been fully considered but they are not persuasive. An analysis of the arguments is provided below.

Re claims 1-3, Applicant argues that Low does not expressly disclose remote backup of information (Pp. 11-12). The examiner notes that the application as currently drawn does not fully define remote, and therefore such claims by definition include backup of a logically separated component, i.e. a primary/secondary separation within a network element. For the

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purposes of this action, however, the examiner will focus on Low's teachings regarding a network element, acting as a manager, performing backup on a second, physically separate element.

The examiner notes that applicant does not provide arguments against examiner's showing that Low's SLEE performs backup of SPAs, which in turn perform backup of SSPs. Rather, the applicant cites this argument but merely asserts that Low's SPAs perform remote backup. It is the examiner's assertion that the elements perform both local and remote backup, a combination not precluded by the claims as currently drawn. The applicant is required to consider the cited art as a whole.

The application teaches that "more than one backup service logic may be provided so that should the second service logic also fail, another service logic can be brought into operation and so on." Further, and more to the point, the SPA's storage unit 55 saves "all relevant state data for processing the CS service request; this data will include relevant CV context data and state data on the SLP processing being executed to service the service request (col. 11, lines 1-5)." In other words, the SLP has remote backup performed. Further items mentioned above also show how a similar "context" backup process occurs for other units, and further the necessity of having all data so that an SPA may be switched.

Re claims 4, 8, 12, 16, and 20, applicant argues that Low does not expressly disclose storing the respective local data at a database of the network element manager (P. 13). The arguments regarding this aspect follow the claim 1 discussion.

Re claims 4, 12, 20, and 21, applicant argues that Low does not disclose “storing remotely from the network elements (P. 13).” The examiner did not enter this amendment (P. 5), on the grounds that these amendments change the scope of several claims, and further that the change in scope would have required further search and consideration, particularly in regards to the database structure and location. Applicant has failed to provide any arguments as to why the amendments should be entered, or as to why they could not have been entered in the previous action.

In response to applicant's argument that Brown and Reed cannot be combined with Low, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Low needs a protocol specification in order to be built. Browne teaches “an inter-network call accounting system for use in a communication network such as the public switched

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telephone network (abstract).” Reed teaches an automated communications system and network (abstract). Each insists on using its own protocol, and specifies it clearly. Therefore, each provides information on the superiority of this protocol over other protocols, and hence provides motivation. If there wasn’t sufficient motivation to use such protocols in a communications network, Browne and Reed would either remain silent as to the protocol, or chosen a different one.

Browne teaches that “it is, therefore, of increasing importance that data be collected and processed in connection with communication instances (i.e. the instances in Low) arising outside an operator’s network but terminating in or simply crossing the operator’s network. (col. 1, lines 50-53).” Low shows in several instances embodiments that fulfill this description, and a desire to modify as little of operator’s networking equipment as possible. By usage3 of Browne’s protocols, the above monitoring can be performed and connections to existing networks can be made.

Reed teaches that “a communications object system offers particular advantages for deploying a global name resolution service. With such a service, each communications object provider would have an opportunity to obtain a unique name corresponding to the UID for any communications object.... Because this name resolution service is completely abstracted from any underlying communications addressing protocol, it would allow the use of names that are exactly the same as the real world name of the ... entity that the communications object represents. Also, because the name service results are processed by a link method, the link method can determine the most efficient way to retrieve the specified communications object

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(col. 81, lines 30-60).” In other words, such protocols would be useful in improving Low’s connection methods, such that communication information could include identity, i.e. caller ID.

Therefore, the rejections are maintained for the reasons above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

MHP

28 July 2006

Conferees:



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